

## Memorandum

To: Mark Nisson, MIC:64

Date: January 30, 2002

From: Robert W. Lambert  
Senior Tax Counsel

Subject: **The Presidio of San Francisco – Possessory Interests**

Some time ago, you requested our opinion on whether or not privately held possessory interests located on real property within the Presidio of San Francisco – formerly a United States military base, now a part of the Golden Gate National Recreation Area and the National Park Service – are subject to property taxation by The San Francisco Assessor's Office. While we have spoken about this question and you have informed me that the issue is moot, I will nevertheless briefly answer your question in this memo. I apologize for the delay.

As set forth in more detail below, (i) the Presidio property was ceded to the federal government for military purposes prior to 1939, (ii) the Presidio property is no longer used for military purposes, and (iii) not only has Congress not consented to state and local assessment of privately held possessory interests in Presidio property, but it has enacted legislation specifically precluding the assessment and taxation of such interests. As a consequence, such privately held possessory interests in Presidio real property are exempt from state and local property taxation; and the City and County of San Francisco is precluded from making property tax assessments on such interests.

### **Factual Background**

The Presidio of San Francisco became a United States military base in 1846. In 1994, jurisdiction was transferred to the National Park Service (NPS). Two years after the NPS took over the Presidio, Congress established the Presidio Trust to transform it into “a financially self sufficient park before year 2013, while at the same time preserving its natural, scenic and historic resources.” (The National Park Service – Presidio of San Francisco website, <http://www.presidiofire.8m.com/historyofthe-presidio.html>.)

The Presidio Trust is an executive agency of the U.S. government. Its activities are governed by the Presidio Trust Act, Title 1 of Public Law 104-333, 110 Stats. 4097. (See the Presidio Trust website, <http://www.presidiotrust.gov/trust/index.asp>.)

### **Law and Analysis**

Subdivision (b) of Board Property Tax Rule 20, "Taxable Possessory Interests," provides as follows: "Excluded from the meaning of 'taxable possessory interests,' . . . are any possessory interests in real property located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves." Thus, while possessory interests held by lessees or other users of federal property are generally taxable (*United States of America v. Fresno County* (1975) 50 Cal.App.3d 633, 638-640), those possessory interests that are held within a federal enclave are not. A federal enclave is property over which the federal government holds exclusive jurisdiction." (See United States Constitution, article I, section 8, clause 17; *McFarlin v. Benny Y.* (1980) 101 Cal.App.3d 178, 180; *Surplus Trading Co. v. Cook* (1930) 281 U.S. 647; *U.S. v. Mississippi Tax commission* (1973) 412 U.S. 363.)

In 1936, California enacted the predecessor to Government Code section 126(e). That statute reserves to the State of California the power of taxation as to any post-1939 transfer of land from California to the federal government for military purposes. Accordingly, in our state, possessory interests on military bases may in all cases be taxed if the land was ceded by the state to the federal government after 1939.

In addition, even with regard to federal enclaves, Congress may consent to the state and local taxation of privately held interests (such as leasehold and possessory interests) by waiving its exclusive territorial jurisdiction. (*Rohr Aircraft Corporation v. San Diego County* (1960) 362 U.S. 628; *C.R. Fedrick, Inc. v. SBE* 204 Cal.App.3d 252, 258.) In this regard, section 2667 of Title 10 of the U.S. Code addresses the leasing of real and personal federal property under the control of a military department. Subdivision (e) of that statute specifically provides that, "The interest of a lessee of property leased under this section may be taxed by State or local governments." In this case, however, the Presidio is no longer being put to a military use and, thus, is no longer under the control of a military department. Thus, section 2667 is inapplicable.

Turning to the Presidio, Congress enacted the following law that specifically addresses the state and local taxation of privately held interests in Presidio property: "The [Presidio] Trust and all properties administered by the Trust and all interest created under leased, concession, permits and other agreements associated with the properties shall be exempt from all taxes and special assessments of every kind by the State of California, and its political subdivisions, including the City and County of San Francisco." (P.L. 106-176, Title I, § 101 et seq., 114 Stat. 23 (March 10, 2000), Sec. 103, subd. (c)(9); P.L. 106-291, Title III, § 315, 114 Stat. 989, Oct. 11, 2000; P.L. 106-113, Div B, § 1000(a)(3), 113 Stat. 1535 (enacting into law § 316 of Title III of H.R. 3423 (113 Stat. 1501A-192, as introduced on Nov. 17, 1999; see also 16 USCS § 460bb.) Thus, not only

can it not be said that the federal government has consented to the local assessment of possessory interests on Presidio land, Congress has specifically provided that such interests may not be subjected to state or local assessment or taxation. As a consequence, it is clear that such interests are exempt from property taxation.

### **Conclusion**

As indicated above, (i) the Presidio property was ceded to the federal government for military purposes prior to 1939, (ii) the Presidio property is no longer used for military purposes, and (iii) not only has Congress not consented to state and local assessment of privately held possessory interests in Presidio property, but it has enacted legislation specifically precluding the assessment and taxation of such interests. As a consequence, such privately held possessory interests in Presidio real property are exempt from state and local property taxation.

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